

**From:** [Laura K. McAfee](#)  
**To:** [Hall, Charles](#)  
**Cc:** [Vezner, Kris](#)  
**Subject:** EPA CAA 114 Request -- BASF/Elyria  
**Date:** Wednesday, October 5, 2016 4:23:43 PM  
**Attachments:** [BASF FOIA Response.pdf](#)

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Dear Mr. Hall –

As we discussed, I lay out below a proposed schedule for the production of the documents requested in EPA's September 12, 2016 information request, which BASF received on September 20. At the outset, however, I need your assistance in helping me to understand how this civil Clean Air Act request fits in with any other concerns that EPA (or other agencies) may have regarding BASF's Elyria site. In particular, in the spring of last year, BASF received the attached letter, which gave them the impression that a criminal investigation had been opened relating to these issues. Furthermore, some of the questions in the request appear to ask BASF to admit to potentially criminal conduct (e.g., knowingly operating equipment in violation of legal requirements; or engaging in "falsified recordkeeping").

BASF has expressed to me its desire to cooperate fully in responding to the instant information request. As I am sure you understand and can appreciate, the recommended process, and the scope and content of communications, is significantly different in the civil and criminal contexts, and there are a host of additional concerns that arise when there are such "parallel proceedings." If a criminal investigation is threatened or pending, my highest obligation as counsel is to ensure that my client protects all of its rights and potential defenses. In order to enable a fuller discussion of the relevant issues, I would appreciate it if you could first confirm whether there currently is, or was, an environmental criminal investigation relating to similar Clean Air Act issues at BASF's Elyria site. If there is an open criminal investigation, we will have to re-examine how to approach this request in light of the constitutional, legal, and strategy concerns. In addition, we would request the opportunity to temporarily place this request on hold (similar to a "stay" in formal civil litigation), to allow us to discuss that criminal investigation with the relevant federal representatives handling that matter. One additional alternative, which we have used in other cases, is to allow BASF to move forward on this CAA civil request by having a mutual agreement that restricts the use of the information provided outside the context of this administrative or civil investigation.

Assuming that this response proceeds, the schedule we would propose is as follows:

As I noted on the phone, the request seeks a very large number of documents across a wide variety of equipment. For most of these requests, BASF has some information that can be readily gathered (e.g., the records that the company routinely keeps to document ongoing compliance with its Title V permit), while other information will take significantly more time to retrieve and prepare (e.g., records relating to specific upsets or maintenance work). Therefore, we propose to provide the readily-available information by the original October 20 deadline, with the remaining information by December 20. More specifically, by request number:

1. To be completed by October 20
2. Routine data (Title V and production sheets noting downtime) by October 20; remaining information by December 20
3. Title V sheets and required range to be provided by October 20; remaining information by December 20
4. December 20
5. Maintenance records to be provided by October 20

6. Routine data (Title V and routine internal malfunction reports) by October 20; remaining information by December 20
7. Maintenance records by October 20; remaining documents by December 20
8. Routine data (VE records, routine internal malfunction reports) by October 20; remaining information by December 20
9. Routine malfunction reports to be provided by October 20; remaining information by December 20
10. December 20
11. Routine records (maintenance records, malfunction reports) by October 20; remaining information by December 20
12. Routine malfunction reports to be provided by October 20; remaining information by December 20
13. Routine malfunction reports to be provided by October 20; remaining information by December 20
14. Routine data (Title V and production sheets) by October 20; remaining information by December 20
15. December 20
16. December 20
17. Routine malfunction reports to be provided by October 20; any additional documents by December 20
18. Routine data (VE records, routine internal malfunction reports) by October 20; remaining information by December 20
19. December 20. Any contractor documents that are in the regular files used for routine compliance will be produced with those other documents.
20. Routine records (Title V records, routine internal malfunction reports) by October 20; remaining information by December 20
21. Routine records (Title V records, routine malfunction reports) by October 20; remaining information by December 20
22. Routine records (Title V records, periodic reports) by October 20; any remaining information by December 20
23. Routine reports (malfunction reports, process information) by October 20; remaining information by December 20
24. December 20.

If you have any questions or would like to discuss further, please feel free to call or email me at the contact information below. Thank you for your consideration.

Laura

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